

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600**

www.montgomerycountymd.gov/content/council/boa/index.asp

Case No. A-6213

PETITION OF MARY KUTA
(Hearing held June 6, 2007)

OPINION OF THE BOARD
(Effective date of Opinion, July 13, 2007)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(b)(2). The petitioner proposes the construction of a one-story addition that requires a variance of 12.36 feet as it is within 7.64 feet of the rear lot line. The required rear lot line setback is twenty (20) feet.

Lewis Kuta, the petitioner's husband, and Dana Hayden, an architect, appeared with the petitioner at the public hearing.

The subject property is Lot 10, Block B, Marymount Subdivision, located at 10034 Clue Drive, Bethesda, Maryland, 20817, in the R-60 Zone (Tax Account No. 00666690).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a one-story addition.
2. Ms. Hayden testified that the subject property is located at the intersection of Sinnott and Clue Drives. Ms. Hayden testified that the petitioner's lot is 6,329 square feet and that the application of the required setbacks to the subject property results in a buildable envelope that is 2,280 square feet with a 33% lot coverage.
3. Ms. Hayden testified that the petitioner's lot is triangularly shaped with acute angles and that none of the adjoining and neighboring properties share this characteristic. See Exhibit Nos. 8 [zoning vicinity map] and 11 [rendered survey].

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the subject property is an unusually shaped lot with severe acute angles and that these conditions constrain the buildable envelope. The Board finds that these characteristics are not shared with the adjoining and neighboring properties and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon the property owners.

- (b) *Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance request for the construction of a one-story addition is the minimum reasonably necessary.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed construction will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of 12.36 feet from the required twenty (20) foot rear lot line setback for construction of a one-story addition is granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, and the testimony of their witness, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5(a) and 5(b).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Donna L. Barron, seconded by Wendell M. Holloway, with Caryn L. Hines, Catherine G. Titus and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 13th day of July, 2007.

Katherine Freeman
Executive Director

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

